

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of Brandon Cloud	<b>FINDINGS OF FACT, CONCLUSIONS AND ORDER</b>
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This matter came before Administrative Law Judge Manuel J. Cervantes (ALJ) on June 10, 2009, at 9:30 a.m. for a contested case hearing held by telephone pursuant to a Notice of and Order for Hearing issued on April 22, 2009. Krista Guinn Fink, Associate Legal Counsel, 1450 Energy Park Drive, Suite 200, St. Paul, Minnesota 55108, appeared by telephone on behalf of the Department of Corrections (Department). Brandon Cloud (Respondent) did not appear in person or by telephone.

**STATEMENT OF ISSUE**

Is the Department authorized to collect a supervision fee of \$300.00 from Respondent pursuant to Minn. Stat. § 241.272 through the Minnesota Revenue Recapture System?

Based on the evidence in the record, the ALJ makes the following:

**FINDINGS OF FACT**

1. On April 22, 2009, the Notice of and Order for Hearing in this matter was served by first class mail upon Brandon Cloud while in custody, c/o Minnesota Correctional Facility-Rush City, 7600 525 Street, Rush City , MN 55069, at his last known address on file with the Department of Corrections.<sup>1</sup> It notified the Respondent of the hearing scheduled for June 10, 2009. The mailing was not returned to the Department as undeliverable.

2. On June 10, 2009, the Respondent failed to appear at the Hearing or to notify the Administrative Law Judge that he was unable to appear nor did he request a continuance. Respondent has not provided a forwarding address or phone number to the ALJ or to the Department's Legal Counsel as requested.<sup>2</sup>

3. The Notice of and Order Hearing informed Respondent that if he failed to appear at the hearing without the prior consent of the judge, he would be deemed in default, the allegations against him would be deemed proved, and the Respondent

<sup>1</sup> Certificate of Service, dated April 22, 2009.

<sup>2</sup> Letter of Krista Fink, Associate Legal Counsel, dated April 22, 2009.

would be required to pay the correctional fees imposed upon him pursuant to Minn. Stat. § 241.272.

4. The Department moved the ALJ to grant the relief requested by default. Because the Respondent failed to appear, he is in default.

5. Pursuant to Minn. R. 1400.6000,<sup>3</sup> the allegations contained in the Notice of and Order for Hearing are taken as true and incorporated into these Findings of Fact.

6. On March 8, 2008, Respondent was sentenced for the conviction of a felony level offense, Assault in the Fifth Degree.<sup>4</sup> On January 6, 2009, Respondent was placed on probation.<sup>5</sup> On February 5, 2009, Respondent's probation was revoked.<sup>6</sup>

7. The Department imposes an annual supervision fee upon all offenders under the supervision of a correctional agent.<sup>7</sup> A supervision fee in the amount of \$300.00 was imposed upon Respondent. Respondent has not paid the fee.

8. On March 2, 2009, the Department notified Respondent of its intent to collect the supervision fee through the Minnesota Revenue Recapture Program and of his right to request a hearing.<sup>8</sup> On March 22, 2009, Respondent requested a contested case hearing.<sup>9</sup> Respondent's letter indicated that he had documentation that the fee had been waived.<sup>10</sup>

9. Between the time of receipt of the Notice of and Order for Hearing and the hearing date of June 10, 2009, Respondent was released from correctional custody.<sup>11</sup>

Based upon the foregoing Findings of Fact, the ALJ makes the following:

### **CONCLUSIONS**

1. The ALJ has jurisdiction in this matter pursuant to Minn. Stat. §§ 241.272, 270A.08, and 270A.09.

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant procedural requirements of law and rule.

3. The Department has authority to impose a correctional fee, as set forth in Minn. Stat. § 241.272. The Respondent received services for which a fee may be imposed.

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<sup>3</sup> Minnesota Rules are cited to the 2007 edition.

<sup>4</sup> Recording of hearing, no transcript has been prepared. (Tr.).

<sup>5</sup> Department Letter to Respondent, dated March 2, 2009.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; Minn. Stat. § 241.272.

<sup>8</sup> *Id.*

<sup>9</sup> Letter of Brandon Cloud, dated March 22, 2009.

<sup>10</sup> *Id.*

<sup>11</sup> Tr., the record is silent as to the exact date Respondent was released.

4. Minn. R. 1400.8560, states, in relevant part, that

A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing. If the agency appears at a hearing but the party against whom the agency intends to take action does not, the allegations in the notice of hearing shall be taken as true and deemed proved without further evidence.

5. The Notice of and Order for Hearing contains similar language. It states,

The Respondent's failure to appear at the hearing or any prehearing conference may result in a finding that the Respondent is in default, that the Department of Corrections allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.<sup>12</sup>

6. By failing to appear, the Respondent is in default.

7. The \$300.00 fee is a "correctional fee" within the meaning of Minn. Stat. § 241.272. Under Minn. Stat. § 241.272, subd. 3(a), the Department may impose and collect fees from individuals on probation at any time while the offender is under sentence or after the sentence has been discharged. Under subdivision 3(b) of that statute, the Department may use any available civil means of debt collection to collect a correctional fee.

8. DOC Policy 201.013 (effective 7/1/08) was applicable on January 6, 2009 when Respondent was placed on probation. The Department properly imposed a \$300 supervision fee upon Respondent.<sup>13</sup>

9. The Minnesota Revenue Recapture Act authorizes State agencies, including the Department of Corrections, to collect debts owed to it by filing a claim with the Minnesota Department of Revenue. The Department of Revenue may collect amounts due to the Department of Corrections by setting off the amount of such debt from refunds due to debtors. Refunds include individual income tax refunds, political contribution refunds, property tax credits or refunds, and lottery prizes of \$600 or more.

10. The Department of Revenue may collect the supervision fee of \$300.00 from Respondent through the revenue recapture provisions of Minn. Stat. ch. 270A.

Based on the foregoing Conclusions, the ALJ makes the following:

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<sup>12</sup> Notice and Order for Hearing, p. 2, para. 1.

<sup>13</sup> DOC Policy 201.013 (effective 7/1/08).

## **ORDER**

**IT IS ORDERED:** that the Department of Corrections may collect \$300.00 due from Respondent through the setoff collection under Minn. Stat. § 270A.07.

Pursuant to Minn. Stat. § 270.09, subd. 3, a copy of this Order shall be served on the parties, the commissioner of revenue, and the attorney general.

Dated: June 15, 2009

s/Manuel J. Cervantes  
MANUEL J. CERVANTES  
Administrative Law Judge

## **NOTICE**

Pursuant to Minn. Stat. § 270A.09, subd. 3, this Order constitutes a final decision. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

## **MEMORANDUM**

Respondent was given due notice of the hearing of June 10, 2009. He did not appear or make other arrangements with the ALJ and, therefore, the Department is entitled to the relief requested by default.

**M. J. C.**